

111TH CONGRESS  
1ST SESSION

# H. R. 995

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older and for such screening and annual magnetic resonance imaging for women at high risk for breast cancer if the coverage or plans include coverage for diagnostic mammography for women 40 years of age or older.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 11, 2009

Mr. NADLER of New York (for himself, Mr. ACKERMAN, Mr. BISHOP of Georgia, Mr. BISHOP of New York, Ms. BORDALLO, Mrs. CAPPS, Mrs. CHRISTENSEN, Mr. CLEAVER, Mr. COHEN, Ms. EDWARDS of Maryland, Mr. FRANK of Massachusetts, Mr. GRIJALVA, Mr. HONDA, Ms. KAPTUR, Mr. KUCINICH, Ms. LEE of California, Mrs. MALONEY, Mr. MICHAUD, Mrs. NAPOLITANO, Ms. NORTON, Ms. SCHAKOWSKY, Mr. SERRANO, Mr. SIRES, Ms. SUTTON, Ms. ROS-LEHTINEN, Ms. WASSERMAN SCHULTZ, and Mr. SCOTT of Virginia) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Public Health Service Act and Employee Retirement Income Security Act of 1974 to require that group and individual health insurance coverage and group health plans provide coverage for annual screening mammography for women 40 years of age or older and for such screening and annual magnetic resonance imag-

ing for women at high risk for breast cancer if the coverage or plans include coverage for diagnostic mammography for women 40 years of age or older.

1       *Be it enacted by the Senate and House of Representa-*  
 2       *tives of the United States of America in Congress assembled,*  
 3       **SECTION 1. SHORT TITLE; FINDINGS.**

4       (a) SHORT TITLE.—This Act may be cited as the  
 5       “Mammogram and MRI Availability Act of 2009”.

6       (b) FINDINGS.—Congress finds the following:

7               (1) An estimated 211,000 women will have been  
 8       diagnosed with breast cancer and an estimated  
 9       40,000 women will have died from breast cancer  
 10       during 2005.

11              (2) Breast cancer is the second leading cause of  
 12       death for women in the United States and is the  
 13       leading cause of death for women between the ages  
 14       of 40 and 49 in the United States.

15              (3) Breast cancer death rates were reduced by  
 16       24 percent from 1990 to 2000.

17              (4) A study sponsored by the National Cancer  
 18       Institute and published on October 27, 2005, con-  
 19       cluded that up to 65 percent of the reduction in the  
 20       number of breast cancer deaths was directly attrib-  
 21       utable to screening mammography.

22              (5) An expert panel convened by the National  
 23       Institutes of Health’s National Cancer Institute rec-

1 ommended on February 21, 2002, that women be-  
 2 tween the ages of 40 and 49 should be screened  
 3 every one to two years with mammography.

4 (6) The American Cancer Society recommends  
 5 that women over the age of 40 receive an annual  
 6 mammogram.

7 (7) The American Cancer Society, after review-  
 8 ing research since 2002, urges that women at high  
 9 risk for breast cancer receive annual magnetic reso-  
 10 nance imaging in addition to a mammogram because  
 11 such imaging may detect small tumors not found by  
 12 a mammogram.

13 **SEC. 2. COVERAGE OF ANNUAL SCREENING MAMMOG-**  
 14 **RAPHY UNDER GROUP HEALTH PLANS.**

15 (a) PUBLIC HEALTH SERVICE ACT AMENDMENTS.—

16 (1) Subpart 2 of part A of title XXVII of the  
 17 Public Health Service Act is amended by adding at  
 18 the end the following new section:

19 **“SEC. 2708. STANDARDS RELATING TO BENEFITS FOR**  
 20 **SCREENING MAMMOGRAPHY AND MAGNETIC**  
 21 **RESONANCE IMAGING.**

22 **“(a) REQUIREMENTS FOR COVERAGE OF ANNUAL**  
 23 **SCREENING MAMMOGRAPHY AND ANNUAL MAGNETIC**  
 24 **RESONANCE IMAGING.—**

1           “(1) IN GENERAL.—A group health plan, and a  
2           health insurance issuer offering group health insur-  
3           ance coverage, that provides coverage for diagnostic  
4           mammography for any woman who is 40 years of  
5           age or older shall provide coverage for annual  
6           screening mammography for such a woman and di-  
7           agnostic mammography, annual screening mammog-  
8           raphy, and annual magnetic resonance imaging for  
9           any high risk woman under terms and conditions  
10          that are not less favorable than the terms and condi-  
11          tions for coverage of diagnostic mammography for a  
12          woman who is 40 years of age or older.

13           “(2) DEFINITIONS.—For purposes of this sec-  
14          tion—

15                   “(A) The term ‘diagnostic mammography’  
16                   means a radiologic procedure that is medically  
17                   necessary for the purpose of diagnosing breast  
18                   cancer and includes a physician’s interpretation  
19                   of the results of the procedure.

20                   “(B) The term ‘high risk woman’ means a  
21                   woman who—

22                           “(i) has a known BRCA1 or BRCA2  
23                           gene mutation;

24                           “(ii) has a mother, father, brother,  
25                           sister, or child with such a gene mutation

1 and has not had genetic testing to deter-  
2 mine the existence of such a gene muta-  
3 tion;

4 “(iii) has a lifetime risk of breast can-  
5 cer of 20 percent or greater, according to  
6 risk assessment tools that are based main-  
7 ly on family history;

8 “(iv) had radiation therapy to the  
9 chest when the woman was between the  
10 ages of 10 and 30 years of age;

11 “(v) has Li-Fraumeni syndrome,  
12 Cowden syndrome, or Bannayan-Riley-  
13 Ruvalcaba syndrome, or has a relative de-  
14 scribed in clause (ii) who has one of such  
15 syndromes; or

16 “(vi) has another predisposing condi-  
17 tion, as determined by a physician, that  
18 significantly increases the risk of the  
19 woman contracting breast cancer.

20 “(C) The term ‘screening mammography’  
21 means a radiologic procedure provided to a  
22 woman for the purpose of early detection of  
23 breast cancer and includes a physician’s inter-  
24 pretation of the results of the procedure.

1       “(b) PROTECTIONS.—A group health plan, and a  
2 health insurance issuer offering group health insurance  
3 coverage in connection with a group health plan, may  
4 not—

5               “(1) deny coverage for annual screening mam-  
6 mography or annual magnetic resonance imaging on  
7 the basis that the coverage is not medically nec-  
8 essary or on the basis that the screening mammog-  
9 raphy or magnetic resonance imaging, respectively,  
10 is not pursuant to a referral, consent, or rec-  
11 ommendation by any health care provider;

12               “(2) deny to a woman eligibility, or continued  
13 eligibility, to enroll or to renew coverage under the  
14 terms of the plan, solely for the purpose of avoiding  
15 the requirements of this section;

16               “(3) provide monetary payments or rebates to  
17 women to encourage such women to accept less than  
18 the minimum protections available under this sec-  
19 tion;

20               “(4) penalize or otherwise reduce or limit the  
21 reimbursement of an attending provider because  
22 such provider provided care to an individual partici-  
23 pant or beneficiary in accordance with this section;  
24 or

1           “(5) provide incentives (monetary or otherwise)  
2           to an attending provider to induce such provider to  
3           provide care to an individual participant or bene-  
4           ficiary in a manner inconsistent with this section.

5           “(c) RULES OF CONSTRUCTION.—

6           “(1) Nothing in this section shall be construed  
7           to require a woman who is a participant or bene-  
8           ficiary to undergo annual screening mammography  
9           or annual magnetic resonance imaging.

10          “(2) This section shall not apply with respect to  
11          any group health plan, or any group health insur-  
12          ance coverage offered by a health insurance issuer,  
13          which does not provide benefits for diagnostic mam-  
14          mography.

15          “(3) Nothing in this section shall be construed  
16          as preventing a group health plan or issuer from im-  
17          posing deductibles, coinsurance, or other cost-shar-  
18          ing in relation to benefits for screening mammog-  
19          raphy or magnetic resonance imaging under the plan  
20          (or under health insurance coverage offered in con-  
21          nection with a group health plan), except that such  
22          coinsurance or other cost-sharing for any portion of  
23          such benefits may not be greater than such coinsur-  
24          ance or cost-sharing that is otherwise applicable with  
25          respect to benefits for diagnostic mammography.

1           “(4) Women should (but are not required to)  
2       consult with appropriate health care practitioners  
3       before undergoing screening mammography or mag-  
4       netic resonance imaging, but nothing in this section  
5       shall be construed as requiring the approval of a  
6       health care practitioner before a woman undergoes  
7       an annual screening mammography or annual mag-  
8       netic resonance imaging.

9       “(d) NOTICE.—A group health plan under this part  
10   shall comply with the notice requirement under section  
11   715(d) of the Employee Retirement Income Security Act  
12   of 1974 with respect to the requirements of this section  
13   as if such section applied to such plan.

14       “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
15   Nothing in this section shall be construed to prevent a  
16   group health plan or a health insurance issuer offering  
17   group health insurance coverage from negotiating the level  
18   and type of reimbursement with a provider for care pro-  
19   vided in accordance with this section.

20       “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
21   ANCE COVERAGE IN CERTAIN STATES.—

22       “(1) SCREENING MAMMOGRAPHY.—The re-  
23   quirements of this section, with respect to annual  
24   screening mammography, shall not apply with re-  
25   spect to health insurance coverage for women who



1 are 40 years of age or older or who are high risk  
2 women if there is a State law (as defined in section  
3 2723(d)(1)) for a State that regulates such cov-  
4 erage, that requires coverage to be provided for an-  
5 nual screening mammography for women who are 40  
6 years of age or older or who are high risk women  
7 (as defined in subsection (a)(2)(B)), respectively,  
8 and that provides at least the protections described  
9 in subsection (b).

10 “(2) MAGNETIC RESONANCE IMAGING.—The re-  
11 quirements of this section, with respect to annual  
12 magnetic resonance imaging, shall not apply with re-  
13 spect to health insurance coverage if there is a State  
14 law (as defined in section 2723(d)(1)) for a State  
15 that regulates such coverage, that requires coverage  
16 to be provided for annual magnetic resonance imag-  
17 ing for high risk women (as defined in subsection  
18 (a)(2)(B)), and that provides at least the protections  
19 described in subsection (b).

20 “(3) CONSTRUCTION.—Section 2723(a)(1) shall  
21 not be construed as superseding a State law de-  
22 scribed in paragraph (1) or (2).”.

23 (2) Section 2723(c) of such Act (42 U.S.C.  
24 300gg-23(c)) is amended by striking “section 2704”  
25 and inserting “sections 2704 and 2708”.

1 (b) ERISA AMENDMENTS.—

2 (1) Subpart B of part 7 of subtitle B of title  
3 I of the Employee Retirement Income Security Act  
4 of 1974 is amended by adding at the end the fol-  
5 lowing new section:

6 **“SEC. 715. STANDARDS RELATING TO BENEFITS FOR**  
7 **SCREENING MAMMOGRAPHY AND MAGNETIC**  
8 **RESONANCE IMAGING.**

9 “(a) REQUIREMENTS FOR COVERAGE OF ANNUAL  
10 SCREENING MAMMOGRAPHY AND ANNUAL MAGNETIC  
11 RESONANCE IMAGING.—

12 “(1) IN GENERAL.—A group health plan, and a  
13 health insurance issuer offering group health insur-  
14 ance coverage, that provides coverage for diagnostic  
15 mammography for any woman who is 40 years of  
16 age or older shall provide coverage for annual  
17 screening mammography for such a woman and di-  
18 agnostic mammography, annual screening mammog-  
19 raphy, and annual magnetic resonance imaging for  
20 any high risk woman under terms and conditions  
21 that are not less favorable than the terms and condi-  
22 tions for coverage of diagnostic mammography for a  
23 woman who is 40 years of age or older.

24 “(2) DEFINITIONS.—For purposes of this sec-  
25 tion—

1           “(A) The term ‘diagnostic mammography’  
2           means a radiologic procedure that is medically  
3           necessary for the purpose of diagnosing breast  
4           cancer and includes a physician’s interpretation  
5           of the results of the procedure.

6           “(B) The term ‘high risk woman’ means a  
7           woman who—

8                   “(i) has a known BRCA1 or BRCA2  
9                   gene mutation;

10                   “(ii) has a mother, father, brother,  
11                   sister, or child with such a gene mutation  
12                   and has not had genetic testing to deter-  
13                   mine the existence of such a gene muta-  
14                   tion;

15                   “(iii) has a lifetime risk of breast can-  
16                   cer of 20 percent or greater, according to  
17                   risk assessment tools that are based main-  
18                   ly on family history;

19                   “(iv) had radiation therapy to the  
20                   chest when the woman was between the  
21                   ages of 10 and 30 years of age;

22                   “(v) has Li-Fraumeni syndrome,  
23                   Cowden syndrome, or Bannayan-Riley-  
24                   Ruvalcaba syndrome, or has a relative de-

1           scribed in clause (ii) who has one of such  
2           syndromes; or

3           “(vi) has another predisposing condi-  
4           tion, as determined by a physician, that  
5           significantly increases the risk of the  
6           woman contracting breast cancer.

7           “(C) The term ‘screening mammography’  
8           means a radiologic procedure provided to a  
9           woman for the purpose of early detection of  
10          breast cancer and includes a physician’s inter-  
11          pretation of the results of the procedure.

12          “(b) PROTECTIONS.—A group health plan, and a  
13          health insurance issuer offering group health insurance  
14          coverage in connection with a group health plan, may  
15          not—

16               “(1) deny coverage described in subsection  
17               (a)(1) on the basis that the coverage is not medically  
18               necessary or on the basis that the screening mam-  
19               mography or magnetic resonance imaging is not pur-  
20               suant to a referral, consent, or recommendation by  
21               any health care provider;

22               “(2) deny to a woman eligibility, or continued  
23               eligibility, to enroll or to renew coverage under the  
24               terms of the plan, solely for the purpose of avoiding  
25               the requirements of this section;

1           “(3) provide monetary payments or rebates to  
2       women to encourage such women to accept less than  
3       the minimum protections available under this sec-  
4       tion;

5           “(4) penalize or otherwise reduce or limit the  
6       reimbursement of an attending provider because  
7       such provider provided care to an individual partici-  
8       pant or beneficiary in accordance with this section;  
9       or

10          “(5) provide incentives (monetary or otherwise)  
11       to an attending provider to induce such provider to  
12       provide care to an individual participant or bene-  
13       ficiary in a manner inconsistent with this section.

14       “(c) RULES OF CONSTRUCTION.—

15          “(1) Nothing in this section shall be construed  
16       to require a woman who is a participant or bene-  
17       ficiary to undergo annual screening mammography  
18       or annual magnetic resonance imaging.

19          “(2) This section shall not apply with respect to  
20       any group health plan, or any group health insur-  
21       ance coverage offered by a health insurance issuer,  
22       which does not provide benefits for diagnostic mam-  
23       mography.

24          “(3) Nothing in this section shall be construed  
25       as preventing a group health plan or issuer from im-

1       posing deductibles, coinsurance, or other cost-shar-  
2       ing in relation to benefits for screening mammog-  
3       raphy or magnetic resonance imaging under the plan  
4       (or under health insurance coverage offered in con-  
5       nection with a group health plan), except that such  
6       coinsurance or other cost-sharing for any portion of  
7       such benefits may not be greater than such coinsur-  
8       ance or cost-sharing that is otherwise applicable with  
9       respect to benefits for diagnostic mammography.

10       “(4) Women should (but are not required to)  
11       consult with appropriate health care practitioners  
12       before undergoing screening mammography or mag-  
13       netic resonance imaging, but nothing in this section  
14       shall be construed as requiring the approval of a  
15       health care practitioner before a woman undergoes  
16       an annual screening mammography or annual mag-  
17       netic resonance imaging.

18       “(d) NOTICE UNDER GROUP HEALTH PLAN.—The  
19       imposition of the requirements of this section shall be  
20       treated as a material modification in the terms of the sum-  
21       mary plan described in section 102(a), for purposes of as-  
22       suring notice of such requirements under the plan; except  
23       that the summary description required to be provided  
24       under the last sentence of section 104(b)(1) with respect  
25       to such modification shall be provided by not later than

1 60 days after the first day of the first plan year in which  
2 such requirements apply.

3 “(e) LEVEL AND TYPE OF REIMBURSEMENTS.—  
4 Nothing in this section shall be construed to prevent a  
5 group health plan or a health insurance issuer offering  
6 group health insurance coverage from negotiating the level  
7 and type of reimbursement with a provider for care pro-  
8 vided in accordance with this section.

9 “(f) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
10 ANCE COVERAGE IN CERTAIN STATES.—

11 “(1) SCREENING MAMMOGRAPHY.—The re-  
12 quirements of this section, with respect to annual  
13 screening mammography for women who are 40  
14 years of age or older or for high risk women, shall  
15 not apply with respect to health insurance coverage  
16 if there is a State law (as defined in section  
17 731(d)(1)) for a State that regulates such coverage,  
18 that requires coverage to be provided for annual  
19 screening mammography for women who are 40  
20 years of age or older or for high risk women (as de-  
21 fined in subsection (a)(2)(B)), respectively, and that  
22 provides at least the protections described in sub-  
23 section (b).

24 “(2) MAGNETIC RESONANCE IMAGING.—The re-  
25 quirements of this section, with respect to annual

1 magnetic resonance imaging, shall not apply with re-  
 2 spect to health insurance coverage if there is a State  
 3 law (as defined in section 731(d)(1)) for a State  
 4 that regulates such coverage, that requires coverage  
 5 to be provided for annual magnetic resonance imag-  
 6 ing for high risk women (as defined in subsection  
 7 (a)(2)(B)), and that provides at least the protections  
 8 described in subsection (b).

9 “(3) CONSTRUCTION.—Section 731(a)(1) shall  
 10 not be construed as superseding a State law de-  
 11 scribed in paragraph (1) or (2).”.

12 (2) Section 731(c) of such Act (29 U.S.C.  
 13 1191(c)) is amended by striking “section 711” and  
 14 inserting “sections 711 and 715”.

15 (3) Section 732(a) of such Act (29 U.S.C.  
 16 1191a(a)) is amended by striking “section 711” and  
 17 inserting “sections 711 and 715”.

18 (4) The table of contents in section 1 of such  
 19 Act is amended by inserting after the item relating  
 20 to section 714 the following new item:

“Sec. 715. Standards relating to benefits for screening mammography and  
 magnetic resonance imaging.”.

21 (c) EFFECTIVE DATES.—

22 (1) Subject to paragraph (2), the amendments  
 23 made by this section shall apply with respect to  
 24 group health plans (and health insurance coverage



1 offered in connection with group health plans) for  
2 plan years beginning on or after 1 year after the  
3 date of the enactment of this Act.

4 (2)(A) In the case of a group health plan main-  
5 tained pursuant to 1 or more collective bargaining  
6 agreements between employee representatives and 1  
7 or more employers ratified before the date of the en-  
8 actment of this Act, the amendments made by this  
9 section shall not apply to plan years beginning be-  
10 fore the later of—

11 (i) the date on which the last collec-  
12 tive bargaining agreements relating to the  
13 plan terminates (determined without re-  
14 gard to any extension thereof agreed to  
15 after the date of the enactment of this  
16 Act); or

17 (ii) 1 year after the date of the enact-  
18 ment of this Act.

19 (B) For purposes of subparagraph (A)(i), any  
20 plan amendment made pursuant to a collective bar-  
21 gaining agreement relating to the plan which  
22 amends the plan solely to conform to any require-  
23 ment added by this section shall not be treated as  
24 a termination of such collective bargaining agree-  
25 ment.

1 **SEC. 3. COVERAGE OF ANNUAL SCREENING MAMMOG-**  
 2 **RAPHY AND ANNUAL MAGNETIC RESONANCE**  
 3 **IMAGING UNDER INDIVIDUAL HEALTH COV-**  
 4 **ERAGE.**

5 (a) IN GENERAL.—Part B of title XXVII of the Pub-  
 6 lic Health Service Act is amended by inserting after sec-  
 7 tion 2753 the following new section:

8 **“SEC. 2754. STANDARDS RELATING TO BENEFITS FOR**  
 9 **SCREENING MAMMOGRAPHY AND MAGNETIC**  
 10 **RESONANCE IMAGING.**

11 “(a) IN GENERAL.—The provisions of section 2708  
 12 (other than subsections (d) and (f)) shall apply to health  
 13 insurance coverage offered by a health insurance issuer  
 14 in the individual market in the same manner as it applies  
 15 to health insurance coverage offered by a health insurance  
 16 issuer in connection with a group health plan in the small  
 17 or large group market.

18 “(b) NOTICE.—A health insurance issuer under this  
 19 part shall comply with the notice requirement under sec-  
 20 tion 715(d) of the Employee Retirement Income Security  
 21 Act of 1974 with respect to the requirements referred to  
 22 in subsection (a) as if such section applied to such issuer  
 23 and such issuer were a group health plan.

24 “(c) PREEMPTION; EXCEPTION FOR HEALTH INSUR-  
 25 ANCE COVERAGE IN CERTAIN STATES.—

1           “(1) ANNUAL SCREENING MAMMOGRAPHY.—

2           The requirements of this section, with respect to an-  
3           nual screening mammography for women who are 40  
4           years of age or older or for high risk women, shall  
5           not apply with respect to health insurance coverage  
6           if there is a State law (as defined in section  
7           2723(d)(1)) for a State that regulates such cov-  
8           erage, that requires coverage in the individual health  
9           insurance market to be provided for annual screen-  
10          ing mammography for women who are 40 years of  
11          age or older or for high risk women, respectively,  
12          and that provides at least the protections described  
13          in section 2708(b) (as applied under subsection (a)).

14          “(2) MAGNETIC RESONANCE IMAGING.—The re-  
15          quirements of this section, with respect to annual  
16          magnetic resonance imaging, shall not apply with re-  
17          spect to health insurance coverage if there is a State  
18          law (as defined in section 2723(d)(1)) for a State  
19          that regulates such coverage, that requires coverage  
20          in the individual health insurance market to be pro-  
21          vided for annual magnetic resonance imaging for  
22          high risk women, and that provides at least the pro-  
23          tections described in section 2708(b) (as applied  
24          under subsection (a)).

1           “(3) CONSTRUCTION.—Section 2762(a) shall  
2       not be construed as superseding a State law de-  
3       scribed in paragraph (1) or (2).”.

4       (b) CONFORMING AMENDMENT.—Section 2762(b)(2)  
5 of such Act (42 U.S.C. 300gg-63(b)(2)) is amended by  
6 striking “section 2751” and inserting “sections 2751 and  
7 2754”.

8       (c) EFFECTIVE DATE.—The amendments made by  
9 this section shall apply with respect to health insurance  
10 coverage offered, sold, issued, or renewed in the individual  
11 market on or after the date that is 1 year after the date  
12 of the enactment of this Act.

○